

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing Nos. 15,121) & 15,199

Appeal of)

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INTRODUCTION

The petitioner appeals decisions by the Department of Social Welfare refusing to approve the petitioner's voluntary job as a qualifying work program under the ANFC mandatory work program and its proposal to sanction him for failure to cooperate by participating in a qualifying program.

FINDINGS OF FACT

1. The petitioner is an ANFC recipient on behalf of himself and his minor child who has been assigned to Group 3 since September 30, 1994.
2. The petitioner was engaged in a mandatory job search pursuant to work regulations under the Welfare Restructuring Project until April 1, 1997 at which time he reached his time limit for finding employment and was required to accept "Community Service Employment (CSE)". It was explained to the petitioner before April 1, 1997, that participation in CSE was mandatory at this point.
3. The petitioner had been volunteering at a Meal Site for the Area Agency on Aging for some months before his mandatory date. He received only reimbursement for the mileage put on his car in delivering the meals. The petitioner asked DSW to approve his volunteer job at the Meal Site as his CSE with a view towards becoming an advocate for the elderly. He was told that the site could not be approved because it was not listed as a "non-profit" with the IRS or the Secretary of State as was required by regulations governing the approval of CSEs because it had failed to pay a \$500 fee to get such a designation. The petitioner asked the Department to look into the matter further to see if the Meal program could register as a non-profit and meet the requirements. He was told that it would be looked into. The petitioner was also given an appointment to go for an interview for a job at the Armory which was an approved CSE site.
4. The petitioner did not go to the Armory interview because he thought the propriety of his current job was under review and that attendance at these interviews was not mandatory. His failure to show up for three interviews set up by DET with the Armory resulted in a "conciliation" letter being sent to him on June 30 1997, in which he was advised that he needed to attend a meeting on July 9, 1997, to discuss his "failure to accept Community Service Employment slot at the Armory site in Newport on three different occasions" or to engage in twenty hours of work search.

5. The petitioner attended that conciliation meeting on July 9 at which questions regarding the viability of the Meal Site were raised and at the conclusion signed a statement agreeing to the following plan:

1 [Petitioner] to conduct 20 hr per week job search under the direction of DET. Mike is contact person.

2 Reach Up to investigate legality of using private vehicle used to transport Meals while on CSE slot. Reach up to determine if Meal site and/or Agency Area on Agency (sic) will be a viable site for appropriate placement due to past volunteer work and/or a non-profit organization. Once decisions are made [petitioner] to begin CSE as developed by DET.

6. Subsequent to this plan, the petitioner was notified by letter dated July 22, 1997 as follows:

To follow up on our conversation of 7/9/97. Even if we could get a resolution to the problems surrounding the non profit status of the meal site our operations unit have raised a couple of issues that indicate the meal site is not an appropriate community service employment site for you. 1.) You have worked at the site in excess of 10 months and have not gained the skills necessary to get unsubsidized work at this site or in a related field. 2.) You would be responsible for your own insurance while driving for the site; the state would have no liability while you are driving your own vehicle while in a CSE position. Additionally we would need you to put this understanding of the state not being liable in writing. Mike and I still plan to meet with you Friday the 25th at 10:00 A.M. at DET.

7. On July 25, 1997 (presumably after their meeting) the Department mailed the petitioner a notice stating that he had failed to do a satisfactory work search and another appointment for a conciliation meeting was made for August 5, 1997. That letter said nothing further about the Meal Site viability. The work search issue was not raised as an issue by either party in this appeal.

8. The petitioner attended the conciliation meeting on August 5, 1997 at which time a discussion was held about the viability of the Meal Site. The petitioner met with his Reach Up and DET counselors and was told he would have to start at some approved CSE placement chosen by the Department while they tried to iron out the status of the Meal Site job. The following plan was set forth in writing by the Department:

[Petitioner] to begin Community Service Employment with the City of Newport recreation department Monday, August 11, 1997.

9. The petitioner disagreed with the plan and refused to sign it. He was specifically advised (due to his contention that he had never been told that these job appointments are mandatory) that he was required to report for this CSE placement. The petitioner was also told he could appeal the decision to place him at the Recreation Center if he disagreed.

10. Because the petitioner did not want to leave his job for another, he appealed the plan of the Department on August 8, 1997, saying that he did not feel that the recreation department was an appropriate CSE for him due to problems he had with lifting and that he had received no decision on the viability of the Meal Site from the Department where he continued to volunteer.

11. The petitioner's hearing was originally scheduled for September 11, 1997, at which time the petitioner asked the Department for a final decision on his Meals job site. At that time he was orally told that a decision had been made not to use the Meals Site because it did not meet the definition for a CSE.

He was also told that he was considered to be in a status of non-cooperation with regard to the other placements and that he would receive a sanction notice with regard to his refusal to accept Community Service Employment. The hearing was continued for the Department to send the petitioner the sanction notice and for the petitioner to obtain legal counsel.

12. On September 12, 1997, the Department mailed the petitioner a notice advising him that effective October 1, 1997, sanctions were being imposed on his ANFC grant for refusing without good cause to accept Community Service Employment. The notice also described the sanction and the methods for removing it. A copy of the notice is attached hereto as Exhibit No. One and the contents are incorporated herein by reference as notice given to the petitioner.

13. The petitioner appealed the above sanction notice which was consolidated with his original appeal. The petitioner maintains that he did not refuse to accept CSE but that he was working in a program which he thought was pending approval as a CSE but was unaware that it had been eliminated until September 11, 1997. He did not realize that acceptance of one of those jobs was mandatory and said he did not wish to take advantage of either of them because he saw no future in them. He cited as the basis for this belief that his rejection of the Armory position led not to a sanction but to the Department looking for another job for him. The petitioner's statements are found to be credible. 14. The petitioner stated at the reconvened hearing on October 14, 1997, that he was not opposing the Department on its decision to disqualify his Meal Site work as a CSE nor its request that he accept other CSEs and stood ready to cooperate with those jobs, although medical evidence presented at the hearing indicated he did have a problem with lifting heavy objects which may have been required at his Recreation Job. He opposes, however, the imposition of any sanction on him because he believes he did not refuse to cooperate.

ORDER

The decision of the Department sanctioning the petitioner is reversed.

REASONS

On May 1, 1995, the Department adopted regulations as part of its restructuring which require parents in Group 3 who have been unable to find unsubsidized employment by the end of their time limit to meet their work requirements through Community Service Employment. See W.A.M. § 2346.9. The CSE placements must be with public or non-profit agencies approved by the Department and must meet other suitability criteria with regard to actually preparing the parent for work. W.A.M. § 2346.9-.95. Parents are required to cooperate with the CSE placements and an elaborate system of conciliation meetings are set up to review reasons for non-compliance and remedies to pursue which include, among other options, selecting a more suitable placement or in the case of an actual or de facto refusal to cooperate, the imposition of sanctions. W.A.M. § 2346.96.

The CSE regulations specifically adopt the definitions of overt and de facto refusal found in the Reach Up program. W.A.M. § 2346.96(A). Those regulations provide as follows:

W.A.M § 2349.3 Overt Refusal

Overt refusal occurs when an individual states orally, or in writing, that he or she will not participate or continue to participate in Reach Up program activities. The individual shall be requested to put oral

refusals in writing. If he or she does not, the Reach Up case manager or Eligibility Specialist prepares a written record of the circumstances associated with and the substance of the individual's refusal.

W.A.M. § 2349.4 De Facto Refusal

De facto refusal to participate includes, but is not limited to, an individual's failure without good cause:

- to appear for assessment after two written requests to appear; or
- to appear for a referral to or interview for a job which is consistent with his or her Family Development Plan and is a job he or she is capable of performing as demonstrated by his or her work experience, occupational skills, training, or education; or
- to attend a required educational activity; or
- to show up for a program interview or appointment; or
- to behave in a manner which is not disruptive to a program activity nor to the orderly administration of the program, nor constitutes a threat or hazard to fellow participants; or
- to show up for work; or
- to keep his or her job; to maintain current earnings or achieve a higher level of earnings; or to qualify for unemployment compensation or be ineligible for unemployment compensation for a reason other than the individual's conduct on the job, if employment terminates for any reason; or
- to accept appropriate, quality child care, as defined at 2348.1, which would allow participation in work or training; or
- to accept other services, such as transportation, which would allow participation in work or training.

When the failure or refusal is implied (de facto) by an individual's failure without good cause to fulfill one or more of the above standards, the Reach Up case manager may attempt to contact the individual and discuss the act or pattern of behavior in question. If the individual fails to cooperate or fails to meet good cause criteria, the conciliation process begins.

The facts do not support a finding that the petitioner expressed an overt refusal to participate in the CSE program. He did overtly challenge the Department's mandatory placement of him in a recreation program on August 5, 1997 by appealing that decision. However, it would be unfair to characterize his disagreement and appeal as a refusal. To do so would chill the rights of recipients to appeal placement decisions through processes set up in the regulations.

The remaining question is whether the petitioner's actions prior to August 5, 1997, constituted a de facto refusal to cooperate with a CSE placement. To be sure, the petitioner did fail to appear for a referral to or interview for a job with the Armory on three occasions. That fact alone is not sufficient to find a de facto refusal under the above regulations. There must also be a showing made that the job referral was

consistent with his or her Family Development Plan and that there was no other good cause for the failure to attend.

There was nothing in either the petitioner's written plan or in the follow-up letter which required him to accept the Armory placement. On the contrary, those plans and letters indicated that the Department was still reviewing the eligibility of his volunteer job as an appropriate placement. The interviews set up for him at the Armory were not supported by the written plan and were inconsistent with other written and oral conversations he had with the Department. While it may have been made clear to him that he needed to participate in CSE, there was nothing in the evidence to indicate that it was made clear to him that he had to participate by taking this particular job.

In addition, the inconsistency of the Department's plan and letters with its actions created confusion which formed the basis for good cause for not attending those interviews. The petitioner did attend all of the meetings and conciliations which were called in his case and was fully involved in attempting to create a CSE placement for himself. On this evidence it cannot be found that he refused to cooperate. In addition, he indicated at the hearing that once he understood that his job would not be CSE approved he would cooperate with other job placements. As such, it must be found that the sanction placed on him for refusal to cooperate was unwarranted and the Department's decision is reversed.

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